

U.S. Express Mail Label No.
EV017081255US

PATENT APPLICATION

I hereby certify that this paper is being deposited with the United States Postal Service on **May 30, 2002**, in an envelope as "Express Mail Post Office to Addressee" mailing Label No. EV017081255US addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Annette M. Turk

Annette M. Turk, Legal Assistant

May 30, 2002

(Date)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Brad Baker

Serial No. 09/607,313

Filed: June 28, 2000

For: PAINT SET CONFECTIONERY

Examiner: L. Tran

Group Art Unit: 1761

DECLARATION OF STEVEN MOSKOWITZ**RECEIVED**

JUN 10 2002

TC 1700

I, Steven Moskowitz, do hereby declare and state as follows:

1. I am an employee of Impact Confections, Inc. ("Impact"), which I understand is the owner of a patent application for the product marketed by Impact under the name LOLLIPOP PAINT SHOP ("Paint Shop"). I have been employed by Impact since April 1999. Prior to my employment at Impact, I was employed by Topps, Inc., one of the largest novelty candy manufacturers in the United States. During that employment, I developed the concept of a candy product that included a paint roller in which the roller was a hard candy mounted on a

plastic handle and sold with a paint tray, a packet of powdered candy, as shown in the two (2) colored photograph reproductions attached hereto. That product was called ROLLER POP ("Roller Pop").

2. The Roller Pop product was launched in approximately 1993 or 1994 by Topps, Inc. It had mild success in the marketplace for a limited period of time. I have attached a color photocopy of two photographs of the Roller Pop product.

3. I am also familiar with the marketing and sales of the Impact Paint Shop product. Based on my 11 years of experience in the industry, it is my opinion that the Paint Shop product is a commercial success.

4. One of the reasons why I believe that the Paint Shop product is successful is that the roller (sucker) in the Roller Pop product was awkward to lick because the plastic handle was in the way. This made it difficult for the user to lick and therefore wet the entire sucker. By contrast, the paint brush candy sucker in the Paint Shop product can be easily licked by a child on all sides and access to the candy is not impeded by the plastic brush handle. A second problem with Roller Pop was that the powder in the Roller Pop product was delivered in a plastic packet inserted within the point-of-sale plastic package, as seen in the second photo reproduction attached. If the child discontinued consumption before all of the powder poured from the packet into the tray was consumed, it left several potential problems. One was that the powder could easily be spilled from the tray because there was no cover on the tray. Also, in several instances, and also due to manufacturing difficulties, once the paint roller sucker was licked, it would then not roll properly or at all, thus defeating the ability to cover the entire cylindrical sucker in the


powder in the paint tray. Additionally, the Roller Pop was designed to be consumed in one eating event whereas Lollipop Paint Shop powder could be saved for later with use of its lid. By comparison to the Paint Shop product, where no rolling is required to coat the sucker, it does not interfere with the ability to coat the hard candy with the powder.

5. Although I was the originator of the Roller Pop product, it never occurred to me or anyone else at Topps to my knowledge to try and sell the product with a lid on the paint tray and with the powder loosely contained within the paint tray rather than in a plastic packet.

6. Notwithstanding my experience as outlined above, which I believe qualifies me as someone with ordinary skill in the candy industry, the Paint Shop product was not obvious to me at the time it was invented.

7. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Dated this 29 day of April, 2002.


Steven Moskowitz

G:\IT\Impact Confessions\Pleadings\Moskowitz declaration.doc